

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0464P

**Withholding Tax
January through December 2001**

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

II. Tax Administration – Interest

Authority: IC 6-8.1-10-1; 45 IAC 15-11-1

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

Taxpayer was assessed late filing penalties. Taxpayer's CPA protested the penalties and states that a former employee of the company, with controller authority and responsibility, did not make the withholding payments but falsely created accounting records. The company owners were therefore misled and unaware that a liability for payment existed. It instituted the aid of a CPA, who requested that the Department waive the penalties and interest assessed against the taxpayer.

Taxpayer states its non-payment of withholding taxes arose from a controller that did not fulfill the responsibilities of the job. The taxpayer states it was unaware that the WH-1 returns had not been filed and tax had not been paid. Upon discovery, they immediately took steps to determine which periods needed returns and payments.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer states that it filed the missing returns immediately upon its knowledge that they were not remitted. Taxpayer further states it has cleared up the problem. Taxpayer states that it was unaware that its controller did not file the returns.

Taxpayer's failure to remit the tax was not the result of reasonable cause. Taxpayer should have been aware of the actions of its employee.

FINDING

Taxpayer's protest is denied.

II. Tax Administration – Interest

DISCUSSION

Taxpayer requests that the department waive the interest assessed.

The Indiana statute does not allow a waiver of interest.

FINDING

Taxpayer's protest is denied.